FILED
NOV 14 2003

(6)

No. 02-1684

In the Supreme Court of the United States

MICHAEL YARBOROUGH, WARDEN, PETITIONER

v.

MICHAEL ALVARADO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

THEODORE B. OLSON
Solicitor General
Counsel of Record
CHRISTOPHER A. WRAY
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JOHN P. ELWOOD
Assistant to the Solicitor General
DEBORAH WATSON
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

BEST AVAILABLE COPY

34 pp

QUESTION PRESENTED

The United States will address the following question:

Whether a court must consider the age and experience of a juvenile in determining whether he is "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966).

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	2
Summary of argument	8
Argument:	
Age and experience are not relevant considerations in determining whether a juvenile is "in custody" under *Miranda*	10
A. The *Miranda* custody determination requires an objective examination of restrictions on freedom of movement	11
1. The Due Process voluntariness test and *Miranda* serve fundamentally different purposes	11
2. The characteristics of individual suspects are not relevant to determining whether they are "in custody" under *Miranda*	14
B. The Ninth Circuit's rule would undermine *Miranda*'s purpose of providing clear guidelines for police and courts	17
C. Respondent was not in custody at the time of his interview	25
Conclusion	28

TABLE OF AUTHORITIES

Cases:

Beckwith v. *United States*, 425 U.S. 341 (1976)	13
Berkemer v. *McCarty*, 468 U.S. 420 (1984)	*passim*
California v. *Beheler*, 463 U.S. 1121 (1983)	8, 10, 13, 14, 15, 26
Carroll v. *United States*, 267 U.S. 132 (1925)	3

Cases—Continued: Page

Clewis v. *Texas*, 386 U.S. 707 (1967) 16
Colorado v. *Spring*, 479 U.S. 564 (1987) 17
Davis v. *North Carolina*, 384 U.S. 737 (1966) 23
Dickerson v. *United States*, 530 U.S. 428 (2000) 11, 12, 17, 23
Fikes v. *Alabama*, 352 U.S. 191 (1957) 16
Gallegos v. *Colorado*, 370 U.S. 49 (1962) 12, 15, 23
Gault, In re, 387 U.S. 1 (1967) 12
Greenwald v. *Wisconsin*, 390 U.S. 519 (1968) 16
Haley v. *Ohio*, 332 U.S. 596 (1948) 12
Harris v. *New York*, 401 U.S. 222 (1971) 23
Michigan v. *Chesternut*, 486 U.S. 567 (1988) 18
Miller v. *Fenton*, 474 U.S. 104 (1985) 12
Minnesota v. *Murphy*, 465 U.S. 420 (1984) 15, 26
Miranda v. *Arizona*, 384 U.S. 436 (1966) 1, 5, 8, 10, 13
Moran v. *Burbine*, 475 U.S. 412 (1986) 17, 23
New York v. *Quarles*, 467 U.S. 649 (1984) 14, 18
North Carolina v. *Butler*, 441 U.S. 369 (1979) 12
Oregon v. *Elstad*, 470 U.S. 298 (1985) 23
Oregon v. *Mathiason*, 429 U.S. 492 (1977) ... 10, 13, 14, 25, 28
Payne v. *Arkansas*, 356 U.S. 560 (1958) 16
People v. *Aguilera*, 59 Cal. Rptr. 2d 587 (1996) 5
People v. *P.*, 233 N.E.2d 255 (N.Y. 1967) 18, 27
Rakas v. *Illinois*, 439 U.S. 128 (1978) 26
Schneckloth v. *Bustamonte*, 412 U.S. 218 (1973) 12, 13
Stansbury v. *California*, 511 U.S. 318 (1994) 10, 14, 17
State v. *Ledbetter*, 818 A.2d 1 (Conn. 2003) 24
Stein v. *New York*, 346 U.S. 156 (1953) 12
Thompson v. *Keohane*, 516 U.S. 99 (1995) 10, 11, 13
United States v. *Beraun-Panez*, 812 F.2d 578, modified, 830 F.2d 127 (9th Cir. 1987) 22
United States v. *Chalan*, 812 F.2d 1302 (10th Cir. 1987), cert. denied, 488 U.S. 983 (1988) 22
United States v. *Macklin*, 900 F.2d 948 (6th Cir.), cert. denied, 498 U.S. 840 (1990) 19, 22

Cases—Continued: Page

United States v. *Madoch*, 149 F.3d 596 (7th Cir. 1998) 26
United States v. *Phillips*, 812 F.2d 1355 (11th Cir. 1987) 19
United States v. *Salyers*, 160 F.3d 1152 (7th Cir. 1998) 22
United States v. *Webb*, 755 F.2d 382 (5th Cir. 1985) 26
United States v. *Welch*, No. CR-3-9-98, 1992 WL 1258524 (S.D. Ohio Mar. 19, 1992) 22
Withrow v. *Williams*, 507 U.S. 680 (1993) 12, 17

Constitution and statutes:

U.S. Const.:
Amend. V 15
Due Process Clause 6, 8, 11
Amend. XIV (Due Process Clause) 6, 8, 11
Federal Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq.* 1
18 U.S.C. 5032 1
18 U.S.C. 5033 25
28 U.S.C. 2254 6
28 U.S.C. 2254(d)(1) 7
Colo. Rev. Stat. § 19-2-511(1) (2001) 24
Conn. Gen. Stat. Ann. § 46b-137(a) (West 1995 & Supp. 2003) 24
Ind. Code Ann. § 31-32-5-1 (Michie 1997) 25
Iowa Code § 232.11(2) (West 2000) 25
Mont. Code Ann. § 41-5-331 (2001) 25
N.C. Gen. Stat. § 7B-2101(b) (2001) 24
N.M. Stat. Ann. (Michie 1999):
§ 32A-2-14(C) 24
§ 32A-2-14(F) 25
Okla. Stat. Ann. tit. 10, § 7303-3.1(A) (West 1998) 24
W. Va. Code § 49-5-2-(*l*) (2001) 24

Miscellaneous: Page

2 Wayne R. LaFave et al., *Criminal Procedure* (2d ed. 1999) 14
Elizabeth S. Scott, *The Legal Construction of Childhood, in a Century of Juvenile Justice* (Margaret K. Rosenheim et al., eds., 2002) 20
Lawrence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice* (Thomas Grisso & Robert G. Schwartz eds., 2000) 19, 20
Geoffrey R. Stone, *The* Miranda *Doctrine in the Burger Court*, 1977 Sup. Ct. Rev. 99 19

In the Supreme Court of the United States

No. 02-1684

MICHAEL YARBOROUGH, WARDEN, PETITIONER

v.

MICHAEL ALVARADO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether a court must consider the age and experience of a juvenile in determining whether he is "in custody" for purposes of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). Although the States adjudicate most violations of law committed by minors, the Department of Justice also initiates proceedings against juveniles under the Federal Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq.* The Act authorizes the Attorney General to bring juvenile delinquency proceedings against a minor in certain circumstances, or to proceed against the minor as an adult if the juvenile consents in writing on the advice of counsel to a transfer to adult status, or (in the case of a minor aged 15 years or older) a court determines that transfer to adult status would be in the interest of justice. 18 U.S.C. 5032. In addition, every year, federal agents interview suspects who

are known to be (or are later discovered to be) juveniles. The United States has an interest in introducing into evidence voluntary, noncustodial statements that are reliable evidence of guilt, regardless of whether the federal agents or state officers who take the statements have correctly assessed the age and experience of those interviewed and correctly determined whether those characteristics rendered them more likely than similarly situated adults to believe themselves to be in custody.

STATEMENT

1. After midnight on the morning of September 23, 1995, respondent, Paul Soto, Manuel Rivera, and a group of acquaintances went to a shopping mall in Santa Fe Springs, California. There they saw a truck driven by an older man, later identified as Francisco Castaneda. In respondent's presence, Soto said, "Let's Jack," meaning to steal the truck. As Castaneda was standing outside of the truck, Soto approached the driver's side of the truck while respondent approached the passenger's side. A gun was fired, killing Castaneda, and the group fled to Rivera's house. Soto told Rivera that he had shot the driver when he refused to give him the keys to the truck. After Soto left the gun at Rivera's house, Rivera and respondent hid the gun in a park. Pet. App. C3-C4.

2. On October 24, 1995, Detective Cheryl Comstock of the Los Angeles County Sheriff's Department left a message at respondent's family home that she needed to speak with him. Detective Comstock then contacted respondent's mother at work. Respondent's mother told Comstock that her husband would bring respondent to the sheriff's station. Respondent's mother and father accompanied respondent to the station and gave Comstock permission to interview him. Pet. App. C12; J.A. 72-73. Comstock interviewed respondent alone. Pet. App. A8. At the time of the interview, respondent was 17 years and seven months old (see J.A. 344), had no criminal history, and had never before been questioned by the police.[1] Pet. App. A8.

The interview, which was tape recorded, lasted two hours, from 12:30 to 2:30 p.m., with one break when Comstock left for the restroom. Pet. App. C12-C13; J.A. 72, 135, 165. At trial, respondent agreed that the interview "was a pretty friendly conversation," J.A. 438; see J.A. 437 ("basically a low-key conversation"), and that although he was "a little nervous" (J.A. 353), his participation in the interview "was all voluntary on [his] part" and he did not "feel coerced or threatened in any way." J.A. 439. He could not remember whether the door of the interview room was open or closed. J.A. 352.

In the beginning of the interview, respondent recounted his activities on the evening of September 22 and morning of September 23, but omitted any reference to the shooting. J.A. 73-101. Detective Comstock stated that respondent's version of events was "pretty accurate," but had "left out the shooting." J.A. 101. When respondent said that he had not seen a shooting, Comstock replied that other witnesses had said "quite the opposite." *Ibid.* Comstock urged him to tell the truth, saying that because so many people were present at the shooting, it was inevitable that some of them would tell what had happened. J.A. 102. Respondent then said that he knew where the shooting occurred, but claimed that he did not remember seeing it. Comstock indicated that she knew respondent had approached the passenger side of the

---

[1] The evidence in the record concerning the circumstances of the interview consists solely of Comstock's brief descriptive statements at the beginning and end of the interview (see J.A. 72-73, 165), respondent's trial testimony (J.A. 350-354, 437-439), and Comstock's trial testimony (J.A. 334-335; C.A. Supp. E.R. 193-197, 201-202). See generally *Carroll* v. *United States*, 267 U.S. 132, 162 (1925) (appellate court may consider trial evidence in reviewing pre-trial suppression ruling).

victim's truck before the shooting, but said that she thought respondent had no intention "of anything happening." J.A. 103.

Respondent stated that he had not killed Castaneda, but did not see what had happened because he had been on the far side of the truck. J.A. 104-105. Detective Comstock again urged respondent to tell the truth, stating that he did not owe anything to those responsible for the shooting because they were not his friends and had placed him in a bad position. J.A. 105-106. Respondent said that Soto had shot Castaneda, apparently because he had resisted Soto's attempt to take his truck. J.A. 110. Respondent said that after Soto had left the gun at Rivera's house, he and Rivera had hidden it in a park, and members of Soto's gang had retrieved it the next morning after respondent and Rivera had shown them where it was. J.A. 113-115; 146-149.

Approximately halfway through the interview, Detective Comstock asked respondent where he would be going "[w]hen we're done here today." J.A. 122. Respondent replied that he would return home. *Ibid.* They continued to discuss the shooting, particularly Soto's actions before the shooting. J.A. 123-134. Later in the interview, Comstock heard respondent's pager go off, and offered to let him use the telephone. When respondent declined the offer, Comstock stated that they "should be done here pretty quick" and respondent could then "go about [his] activities." J.A. 149-150. Comstock then asked respondent whether he needed to use the restroom or get a drink of water. Respondent replied that he did not. J.A. 151. At the conclusion of the interview, Comstock took respondent to rejoin his parents in the station lobby and the three of them left. Pet. App. C15; J.A. 165.

3. In December 1995, respondent was charged in state court with first-degree murder and attempted robbery. He moved to suppress the statements he had made to Detective

Comstock, arguing that he had been subjected to custodial interrogation without receiving the warnings specified by *Miranda* v. *Arizona*, 384 U.S. 436 (1966). The court did not hear testimony, but relied on a transcript of the interview prepared from the recording Comstock made. Following argument, the court denied the motion. At trial, the prosecution played portions of respondent's interview for the jury, and respondent testified on his own behalf. Respondent was convicted of second-degree murder and attempted robbery. The court sentenced respondent to a term of imprisonment for 15 years to life on the murder conviction, and stayed imposition of sentence on the robbery conviction. Pet. 4; Pet. App. C5.

4. The California Court of Appeal affirmed. Pet. App. C1-C26. The court rejected respondent's claim that he had been subjected to custodial interrogation without receiving *Miranda* warnings. *Id.* at C11-C17. After describing respondent's interview in detail, the court contrasted his interview with one the court had found to be custodial in *People* v. *Aguilera*, 59 Cal. Rptr. 2d 587 (1996), in which police told the defendant they would not permit him to leave the station until he had told them the truth, and had engaged in "'tag team' interrogation" that was "intense, persistent, aggressive, confrontational, accusatory, and at times, threatening and intimidating." Pet. App. C16. The court explained:

> [Respondent] was not told he could not leave until he told the truth, and was not subjected to the intense and aggressive tactics employed by the officers in *Aguilera*. Although the officer[] made it clear to [respondent] that [she] disbelieved his early, exculpatory, version of events on the night of the murder, [she] did not fabricate evidence or subject him to the intense pressure used by the officers in *Aguilera*. We are satisfied that a reasonable

> person under the circumstances in which [respondent] was questioned would have felt free to leave. The interrogation was not custodial and no *Miranda* warnings were required.

Id. at C17. The California Supreme Court denied respondent's petition for review. *Id.* at A9.

5. Respondent then filed a petition for habeas corpus in the United States District Court for the Central District of California pursuant to 28 U.S.C. 2254, asserting that his statement should have been suppressed because he was "in custody" at the time of the interview. The district court, adopting the recommendation of the magistrate judge (Pet. App. B9), denied the petition, concluding that under the circumstances of the interview, "a reasonable person would have concluded he would be free to leave." *Id.* at B4. The court emphasized that respondent "was not informed he was under arrest and did receive indications he would be free to leave upon the conclusion of the interview" and that "Comstock never threatened or attempted to deceive [him]." *Id.* at B5. The court concluded that respondent was not entitled to habeas relief because the state court decision was not "contrary to," nor did it involve "an unreasonable application of," "clearly established Federal law, as determined by the Supreme Court of the United States." *Id.* at B7 (quoting 28 U.S.C. 2254(d)).

6. The court of appeals reversed. Pet. App. A6-A30. It held that a court must consider a juvenile suspect's age and experience in determining whether he was "in custody" and thus entitled to *Miranda* warnings. Noting that this Court had considered age and experience in determining the voluntariness of confessions under the Due Process Clause and the voluntariness of waivers of constitutional rights, see *id.* at A15, A17, the court concluded that there was "no principled reason why similar safeguards, commensurate with the age

and circumstances of a juvenile defendant, would not apply equally to an 'in custody' determination." *Id.* at A18-A19.

The court next held that "it is simply unreasonable to conclude that a reasonable 17-year-old, with no prior history of arrest or police interviews, would have felt that he was at liberty to terminate the interrogation and leave." Pet. App. A26 (internal quotation marks and citation omitted). The court noted that Detective Comstock had involved respondent's parents to "arrange the police interview" (*id.* at A20) and thus concluded that his appearance was "obtain[ed] not through his own consent but instead through enlisting his mother's authority." *Id.* at A25. The court considered "most relevant[]" (*id.* at A16) that, in its view, Comstock had refused respondent's parents permission to attend the interview. See also *id.* at A8, A12, A14, A16, A18, A20, A25. The court emphasized respondent's "youth and inexperience with police" (*id.* at A18; see also *id.* at A8, A14), the duration of the interview, Comstock's expression of disbelief of respondent's initial version of events omitting the shooting (*id.* at A18), the fact that respondent was not informed that he was not under arrest (*id.* at A25), and the fact that Comstock had only told him that he was free to use the telephone, get a drink, or use the restroom "well into the course of the interview." *Id.* at A26.

The court concluded that respondent was entitled to federal habeas corpus relief pursuant to 28 U.S.C. 2254(d)(1), because the decision of the California Court of Appeal "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Pet. App. A20-A26. The court also held that the improper admission of respondent's interview statements had a "substantial and injurious effect" on the jury's verdict. *Id.* at A26-A30. The court remanded with directions to grant respondent a conditional writ of

habeas corpus unless the State began proceedings to retry him within 120 days. *Id.* at A5.

SUMMARY OF ARGUMENT

The court of appeals reasoned that, because a person's age and experience are relevant to the voluntariness of a confession under the Due Process Clause and the waiver of constitutional rights, those personal characteristics must also be relevant to the determination of whether a juvenile is "in custody" under *Miranda* v. *Arizona*, 384 U.S. 436 (1966). That conclusion overlooks the fundamental differences between the voluntariness test and *Miranda*.

The due process voluntariness test is used to determine whether a particular suspect's will was overborne by police interrogation. Accordingly, it considers both the circumstances of the interrogation and the subjective characteristics of the suspect. In contrast, the Court adopted *Miranda* to provide an additional degree of protection against the risk that an involuntary confession, taken during custodial interrogation, would be admitted into evidence. *Miranda* holds that, regardless of the suspect's personal characteristics, statements taken during custodial interrogation are inadmissible in the government's case in chief unless the suspect receives specified warnings. Because the *Miranda* warnings are required only when there has been a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest," *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (internal quotation marks omitted), the test focuses only on the restrictive circumstances of the interview, rather than on the suspect's perceptions of them. Although this Court has recognized that many of a suspect's personal characteristics are relevant to the due process voluntariness test, in the nearly 40 years since the *Miranda* decision, this Court never has held any of those personal characteristics to be relevant in determining whether a

person was subject to the functional equivalent of formal arrest.

This Court has often noted that one of the principal advantages of *Miranda* is that it provides police and courts with clear guidance about how custodial questioning must be conducted for statements obtained to be admissible. Because of the considerable advantage afforded by the clear guidance *Miranda* provides, this Court has stated that "the simplicity and clarity of the holding of *Miranda*" are not to be compromised "[a]bsent a compelling justification." *Berkemer* v. *McCarty*, 468 U.S. 420, 432 (1984). The rule adopted by the court of appeals would add significantly to the complexity of *Miranda* in-custody determinations by requiring officers to ascertain the age and experience of suspects (neither of which is readily observed, and which suspects may not disclose), and then make difficult judgments about how those factors would likely affect their perception of events. The court of appeals' rule does not admit of ready limitations, but could be applied to persons with a variety of other personal characteristics. There is no need for such a drastic departure from traditional *Miranda* custody analysis, which provides ample incentives for police to provide *Miranda* warnings whenever officers believe there is a reasonable likelihood a suspect is in custody. In addition, Congress and the state legislatures have enacted a variety of statutory protections carefully tailored to address the vulnerabilities of minors undergoing official questioning.

Respondent was not in custody at the time of his interview. There is no indication that respondent was present at the interview involuntarily, and he was not handcuffed, arrested, or told he was not free to leave. Respondent was interviewed by a single officer, and agreed at trial that the encounter was a "friendly conversation" (J.A. 438) and was not confrontational. Taken as a whole, the objective circum-

stances indicate that respondent was not subject to the functional equivalent of formal arrest.

ARGUMENT

AGE AND EXPERIENCE ARE NOT RELEVANT CONSIDERATIONS IN DETERMINING WHETHER A JUVENILE IS "IN CUSTODY" UNDER *MIRANDA*

Under *Miranda* v. *Arizona*, 384 U.S. 436 (1966), statements taken in custodial interrogation must be preceded by specified warnings in order to be admissible in the government's case in chief. Specifically, the suspect must "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444. *Miranda* warnings are a prerequisite to admissibility, "however, 'only where there has been such a restriction on a person's freedom as to render him "in custody."'" *Stansbury* v. *California*, 511 U.S. 318, 322 (1994) (per curiam) (quoting *Oregon* v. *Mathiason*, 429 U.S. 492, 495 (1977) (per curiam)). In determining whether an individual was in custody, "the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury*, 511 U.S. at 322 (quoting *California* v. *Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam)). That determination involves what this Court has emphasized is "an objective test" (*Thompson* v. *Keohane*, 516 U.S. 99, 112 (1995)): a court must look to "the objective circumstances of the interrogation" (*Stansbury*, 511 U.S. at 323) and, based on them, determine "how a reasonable man in the suspect's position would have understood his situation." *Berkemer* v. *McCarty*, 468 U.S. 420, 442 (1984).

The Ninth Circuit held that in determining whether a juvenile is "in custody" for *Miranda* purposes, courts must apply a different test. Under its decision, courts must determine whether a reasonable person *of the juvenile's age* and *with that juvenile's experience in the criminal justice system* would have felt "at liberty to terminate the interrogation and leave." Pet. App. A26 (quoting *Thompson*, 516 U.S. at 112). That holding improperly transforms what is designed to be an objective examination of the restrictiveness of the circumstances surrounding an interrogation into a subjective inquiry into the vulnerability of the person questioned. It also places on officers the burden of predicting how often-unknown characteristics will affect the suspect's perception of his situation, and undermines the simplicity and clarity of the *Miranda* rule. The judgment of the court of appeals should be reversed.

A. The *Miranda* Custody Determination Requires An Objective Examination Of Restrictions On Freedom Of Movement

1. The Due Process Voluntariness Test And Miranda *Serve Fundamentally Different Purposes*

The Ninth Circuit reasoned that, because a person's age and experience are of central importance in determining the voluntariness of a confession under the Due Process Clause and the waiver of constitutional rights, therefore, "[i]t cannot reasonably be argued that a factor that is so important in analyzing the conduct of a custodial interrogation can become insignificant in the analysis of * * * whether a juvenile is, in fact, 'in custody.'" Pet. App. A23. The Ninth Circuit's decision overlooks that *Miranda* and the voluntariness test serve very different purposes.

Before *Miranda*, this Court "evaluated the admissibility of a suspect's confession under a voluntariness test" (*Dickerson* v. *United States*, 530 U.S. 428, 433 (2000)), whose "primar[y]" (*ibid.*) constitutional basis was the Due Process Clause. Under the due process test, in order to determine whether a particular "defendant's will was overborne"

(*Schneckloth* v. *Bustamonte*, 412 U.S. 218, 226 (1973)) during interrogation, a court must engage in "a weighing of the circumstances of pressure against the power of resistance of the person confessing." *Stein* v. *New York*, 346 U.S. 156, 185 (1953).

Accordingly, the due process test considers "both the characteristics of the accused and the details of the interrogation." *Schneckloth*, 412 U.S. at 226. Under the voluntariness test, relevant factors to be considered include "the crucial element of police coercion, the length of the interrogation, its location, its continuity," as well as "the defendant's maturity, education, physical condition, and mental health." *Withrow* v. *Williams*, 507 U.S. 680, 693-694 (1993) (citations omitted). As the Ninth Circuit noted (Pet. App. A15, A17), this Court has held that a defendant's age and experience with the justice system are factors in determining the voluntariness of confessions and of waivers of constitutional rights.[2]

Miranda developed in significant part as a response to perceived difficulties in applying the due process voluntariness test. The voluntariness test was considered difficult "for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Dickerson*, 530 U.S. at 444.

[2] See, *e.g.*, *Miller* v. *Fenton*, 474 U.S. 104, 117 (1985) ("the defendant's prior experience with the legal process" is a "subsidiary question" to voluntariness); *Gallegos* v. *Colorado*, 370 U.S. 49, 54 (1962) (14-year-old was "not equal to the police in knowledge and understanding of the consequences of the questions * * * [and] is unable to know how to protect his own interests"); *Haley* v. *Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion) (when voluntariness of confession by a child is at issue, "special care in scrutinizing the record must be used"); *In re Gault*, 387 U.S. 1, 55 (1967) (considering youth of defendant in addressing voluntariness of waiver); see also *North Carolina* v. *Butler*, 441 U.S. 369, 374-375 (1979) (determining the voluntariness of a waiver of constitutional rights requires consideration of, among other factors, the "background, experience, and conduct of the accused"); *Schneckloth*, 412 U.S. at 248 & n.37.

In addition, "the advent of modern custodial interrogation brought with it an increased concern about confessions obtained by coercion," *id.* at 434-435, and "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements." *Id.* at 435. Accordingly, the Court determined that "reliance on the traditional totality-of-the-circumstances test raised a risk of overlooking an involuntary custodial confession, a risk that the Court found unacceptably great when the confession is offered in the case in chief to prove guilt." *Id.* at 442 (citation omitted).

In contrast to the voluntariness test, which considers the conduct of law enforcement as applied to a particular suspect to determine whether his will has been overborne, see *Schneckloth*, 412 U.S. at 226, the *Miranda* custody test is, by design, "an objective test." *Thompson*, 516 U.S. at 112. Because "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest" (*Beheler*, 463 U.S. at 1125 (quoting *Mathiason*, 429 U.S. at 495)), the test necessarily focuses on the restrictive circumstances themselves rather than on the suspect's perceptions of them.

In determining whether "indicia of arrest [are] present," *Beheler*, 463 U.S. at 1123, the Court has looked to such factors as the location where the questioning occurs (whether at a police station, in the suspect's own home, or in public),[3] the

[3] See, *e.g.*, *Berkemer*, 468 U.S. at 438 (noting that detained motorist was in view of public in holding that he was not "in custody" during traffic stop); *Beckwith* v. *United States*, 425 U.S. 341, 343-344 (1976) (holding that questioning at the suspect's home was noncustodial); *Miranda*, 384 U.S. at 477 ("General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens * * * is not affected by our holding.").

use of force or restraints,[4] the length of the interview,[5] and the number of officers present.[6] See generally 2 Wayne R. LaFave et al., *Criminal Procedure* § 6.6(d)-(f) (2d ed. 1999) (discussing relevant factors). The Court has observed that "[o]ur decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the persons being questioned." *Stansbury*, 511 U.S. at 323. To determine whether the circumstances surrounding questioning are sufficiently restrictive to constitute custody, the Court looks to "how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442.

2. *The Characteristics Of Individual Suspects Are Not Relevant To Determining Whether They Are "In Custody" Under* Miranda

This Court has rejected claims that the individual characteristics of those questioned must be considered in determining whether they were "in custody" for *Miranda* purposes. For example, the defendant in *California* v. *Beheler*, *supra*, had voluntarily agreed to accompany police to the station house to answer questions about a shooting he had reported. Although he was told he was free to leave, he was not given *Miranda* warnings and made a statement that was

[4] Compare *New York* v. *Quarles*, 467 U.S. 649, 655 (1984) (holding that questioning was custodial when suspect "was surrounded by at least four police officers and was handcuffed" when questioned); *Mathiason*, 429 U.S. at 495 (no restrictions on freedom of action while at police station).

[5] See *Berkemer*, 468 U.S. at 437 (noting traffic stops are "presumptively temporary and brief").

[6] See *Berkemer*, 468 U.S. at 438 (noting the fact that "the detained motorist typically is confronted by only one or at most two policemen further mutes his sense of vulnerability" in holding that persons detained for traffic stops are not "in custody"); *Quarles*, 467 U.S. at 655 (noting presence of "at least four police officers" in determining that suspect was "in custody").

introduced against him at his trial for first-degree murder. The California Court of Appeal reversed his conviction, holding that the interview with police constituted custodial questioning. "Although the indicia of arrest were not present" (463 U.S. at 1123), the court nevertheless concluded the defendant was "in custody." In so holding, the court considered various personal characteristics of the defendant at the time of the interview that, the court believed, made him more susceptible to coercion, such as the fact that he "had been drinking earlier in the day, and was emotionally distraught." *Id.* at 1124-1125. This Court reversed, specifically rejecting the claim that the defendant was "'coerced' because he was unaware of the consequences of his participation" in the interview. *Id.* at 1125 n.3. The Court noted that the defendant had "cite[d] no authority to support his contention that his lack of awareness transformed the situation into a custodial one."[7] *Ibid.* Compare *Gallegos* v. *Colorado*, 370 U.S. 49, 54 (1962) (concluding that confession was involuntary in part because suspect lacked adequate "understanding of the consequences of the questions" asked during interrogation).

[7] To support its conclusion that a suspect's experience with law enforcement (or lack of such experience) was relevant to the custody determination, the Ninth Circuit cited (Pet. App. A13-A14) a passage in *Minnesota* v. *Murphy*, 465 U.S. 420, 433 (1984), in which the Court discussed how a probationer's experience with his probation officer would "insulate him from psychological intimidation that might overbear his desire to claim the [Fifth Amendment] privilege." *Murphy* does not suggest that this Court considered that defendant's personal characteristics in determining whether he was "in custody" for *Miranda* purposes. As the Court made clear in *Murphy*, that case did not involve a *Miranda* claim because the defendant, though a probationer responding to his probation officer's request to attend an interview, was not "in custody." *Id.* at 430. The Minnesota Supreme Court had held by "analogy to *Miranda*" (*id.* at 433) that the probationer's failure to invoke his Fifth Amendment privilege was excusable because of the coercive atmosphere of the interview. The Court rejected that position.

The objective focus of the *Miranda* custody inquiry is especially striking in comparison to the variety of personal characteristics held relevant in the due process voluntariness inquiry. This Court has recognized that many personal characteristics of the suspect—*i.e.*, lack of education, low intelligence, and poor physical condition—are relevant to voluntariness determinations because they bear on the suspect's ability to resist coercion or to appreciate the implications of his actions. See, *e.g.*, *Clewis* v. *Texas*, 386 U.S. 707, 712 (1967) (concern about adult suspect's faculties given "additional weight" because he "had only a fifth-grade education"); *Payne* v. *Arkansas*, 356 U.S. 560, 562 n.4, 567 (1958) (emphasizing that suspect was "mentally dull"); *Fikes* v. *Alabama*, 352 U.S. 191, 196, 198 (1957) (holding that pressure applied against suspect who was "weak of * * * mind" and of "low mentality" rendered statement involuntary); *Greenwald* v. *Wisconsin*, 390 U.S. 519, 520-521 (1968) (per curiam) (emphasizing that suspect did not have his blood-pressure medication); *Clewis*, 386 U.S. at 712 (noting that suspect's faculties were impaired by "sickness"). But in the nearly four decades since *Miranda*, this Court *never* has held any of those personal characteristics to be relevant in determining whether a person was subject to "the functional equivalent of formal arrest."[8] *Berkemer*, 468 U.S. at 442.

[8] Just as the subjective views of suspects are irrelevant to determining custody, so are the subjective views of police. In *Berkemer* v. *McCarty*, this Court held it was irrelevant to the custody determination that a trooper "decided as soon as [a motorist] stepped out of his car that [he] would be taken into custody" (468 U.S. at 442), observing that "[a] policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Ibid.* This Court likewise has held that the fact that "interrogating officers have focused their suspicions upon the individual being questioned * * * is not relevant" to whether he is in custody, unless that fact is communicated to the suspect and thereby is relevant "to the extent [it] influenced the objective conditions surrounding the interrogation." *Stansbury*, 511 U.S. at 326.

That is because the *Miranda* inquiry is designed to identify when the general pressures of custodial interrogation exist; it is only then that the rule of *Miranda* comes into play. See *Dickerson*, 530 U.S. at 434-435. *Miranda*, however, is not a substitute for the case-specific voluntariness inquiry under the due process test. *Id.* at 444.

In short, a suspect's personal characteristics, including age and experience with the criminal justice system, are not relevant to the objective inquiry under *Miranda* of whether restraints imposed are tantamount to those attendant to formal arrest.

B. The Ninth Circuit's Rule Would Undermine *Miranda*'s Purpose Of Providing Clear Guidelines For Police And Courts

As the Court "ha[s] stressed on numerous occasions, '[o]ne of the principal advantages' of *Miranda* is the ease and clarity of its application." *Moran* v. *Burbine*, 475 U.S. 412, 425 (1986) (quoting *Berkemer*, 468 U.S. at 430). *Miranda*, this Court has said, has the "important virtue of informing police and prosecutors with specificity as to how a pretrial questioning of a suspect must be conducted" in order for custodial interrogation to result in admissible statements. *Colorado* v. *Spring*, 479 U.S. 564, 577 n.9 (1987) (internal quotation marks omitted). Because *Miranda* provides "safeguards" that are "'prophylactic in nature" and that operate to exclude unwarned statements obtained even if they would not be considered "involuntary in traditional terms," *Withrow*, 507 U.S. at 690; accord *Dickerson*, 530 U.S. at 444, the Court has emphasized the importance of maintaining the clarity of the *Miranda* rule.

"At least in part in order to preserve its clarity," this Court "ha[s] over the years refused to sanction attempts to

expand [the] *Miranda* holding," *New York* v. *Quarles*, 467 U.S. 649, 658 (1984) (collecting authorities), in recognition of the importance of providing "a workable rule 'to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *Ibid.* Because of the considerable advantages afforded by the clear guidance *Miranda* provides, this Court has indicated it will not compromise "the simplicity and clarity of the holding of *Miranda*" "[a]bsent a compelling justification." *Berkemer*, 468 U.S. at 432.

The objective nature of the "in custody" test directly advances *Miranda*'s interest in providing clear guidance. Because it bases custody determinations on an examination of readily observable conditions surrounding an interview, it provides police and the courts relatively clear and objective criteria by which to determine whether, in situations short of formal arrest, a suspect is in custody for *Miranda* purposes. Cf. *Michigan* v. *Chesternut*, 486 U.S. 567, 574 (1988) (the objective "reasonable person" standard governing whether police conduct constitutes a seizure "ensures that the scope of Fourth Amendment protection does not vary with the state of mind of the particular individual being approached").

In *Berkemer* v. *McCarty*, *supra*, this Court supported its adoption of the "reasonable person" standard for custody determinations by citing the seminal case of *People* v. *P.*, 233 N.E.2d 255, 260 (N.Y. 1967), in which New York's highest court applied an objective "reasonable man" standard in holding that a 16-year-old suspect was not in custody for *Miranda* purposes when he was interrogated by a police officer outside his home. This Court cited *People* v. *P.* for the proposition that "an objective, reasonable-man test is appropriate because, unlike a subjective test, it * * * 'does [not] place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question.'" *Berkemer*, 468 U.S. at 442 n.35. Commentators and courts have likewise noted the value of employing an objective standard that does not consider the characteristics of individual suspects or officers, because of the clearer guidance it provides police. See, *e.g.*, Geoffrey R. Stone, *The* Miranda *Doctrine in the Burger Court*, 1977 Sup. Ct. Rev. 99, 152 (noting that objective approach "has been widely endorsed by courts and commentators alike" because it "eliminates the difficulties of determining states of mind, and does not hold the police responsible for the idiosyncracies of particular defendants"); *United States* v. *Macklin*, 900 F.2d 948, 951 (6th Cir.) (same), cert. denied, 498 U.S. 840 (1990); *United States* v. *Phillips*, 812 F.2d 1355, 1359-1360 (11th Cir. 1987) (same).

The rule adopted by the court of appeals would add significantly to the complexity of *Miranda* in-custody determinations by requiring officers in the field to make difficult determinations about the age, maturity, and experience of the suspect, often based on poor or nonexistent information. It is well established that "adolescence is a period of tremendous variability" in physical, intellectual, emotional, and social development. Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in Youth on Trial: A Developmental Perspective on Juvenile Justice* 9, 24 (Thomas Grisso & Robert G. Schwartz, eds., 2000) (*Developmental Psychology*). Because of wide variations in the physical maturity of adolescents,[9] police frequently will be unable to determine whether they are dealing with a juvenile if the subject is not carrying identification

[9] Most police interaction with suspects who are minors involves adolescents between the ages of 12 and 18. *Developmental Psychology*, *supra*, at 23. "[A]lthough preadolescent crime generates tremendous media coverage, it remains an extremely rare occurrence with such low incidence" that it should not be the focus of juvenile justice policymaking. *Ibid.*

or lies about his age (for example, to avoid arrest for a curfew violation, unlawful possession of alcohol or cigarettes, or any other activity unlawful because of the suspect's age). While it ordinarily would be apparent to the police if a subject is a young juvenile (below, say, age 15), it may not be readily apparent in the case of minors in their later teens, such as respondent here (who was only five months from his eighteenth birthday at the time of the interview).[10] Even if officers are able accurately to determine a subject's age, it will be difficult for a police officer to accurately assess whether and how a reasonable 17-year-old would perceive his situation differently than would a reasonable 15-year-old or a reasonable 18-year-old.

Even if police reasonably can be expected to correctly ascertain the suspect's age and accurately gauge how a reasonable person of that age would perceive his situation, they cannot realistically be expected to determine in every case the juvenile's experience with the criminal justice system, much less conclude how that experience would affect a reasonable juvenile's perceptions. See *Berkemer*, 468 U.S. at 430-431 (noting that "whether the suspect has previously committed a similar offense or has a criminal record of some

[10] Even if the Ninth Circuit were justified in adopting a "reasonable juvenile" rule, see Pet. App. A26, the court did not adequately justify including very late adolescents (such as respondent) in that category. There is a consensus in the developmental literature that children in late adolescence have intellectual development and competency comparable to adults. See, *e.g.*, Elizabeth S. Scott, *The Legal Construction of Childhood, in A Century of Juvenile Justice* 113, 120 (Margaret K. Rosenheim et al., eds., 2002) ("Developmental psychology supports the view that by age eighteen, and certainly by age twenty-one, most individuals attain the presumed adult competency."); *Developmental Psychology, supra*, at 26 (noting that the "intellectual abilities of older adolescents are comparable to those of adults"). Reflecting that fact, many States that have adopted specific protections for minors subject to official questioning have limited their coverage to younger children (typically below the age of 16). See pp. 24-25, *infra*.

other kind" are "circumstances unknowable to the police"). There is no reason to believe that suspects will be forthcoming with accurate recitations of their criminal histories, and it is not uncommon for people to disguise their identities from police, frustrating attempts to use automated databases to retrieve such information. Thus, police would have no reliable way of determining whether or not they must administer *Miranda* warnings. As this Court has observed, "[i]t would be unreasonable to expect the police to make guesses * * * before deciding how they may interrogate the suspect."[11] *Berkemer*, 468 U.S. at 431.

Moreover, the court of appeals' rationale does not admit of ready limitations. The court of appeals drew the age and experience of the suspect from a long list of personal characteristics this Court has recognized to be relevant to determining the voluntariness of a confession, see Pet. App. A15, and the court did not contend that those two factors are uniquely central to voluntariness. A wide variety of people —both adults and minors—have physical or psychological traits that arguably make it more likely they would consider any interaction with police to entail a serious restriction on their freedom of movement. Individuals with low intelligence, people with mental infirmities, people whose cultural background encourages compliance with police requests or

[11] In addition, requiring consideration of how the suspect's criminal history would affect perception would make *Miranda* more difficult by introducing "doctrinal complexit[y]." *Berkemer*, 468 U.S. at 431. Under the court of appeals' rule, it would be an open question whether the inquiry turned solely on the existence of prior arrests or convictions, or whether courts should consider the relationship of the prior offenses to the current charge. It would likewise be an open question whether prior experience (particularly for similar offenses) would support or detract from a finding of custody: after all, it may be argued that persons previously arrested or convicted of a certain offense may be more inclined than those with no criminal history to believe that police who speak to them will not permit them to leave.

causes them to view police with suspicion all might read into their interactions with police coercion that is not apparent from the objective circumstances.[12] If individual characteristics such as these were taken into account in making custody determinations for *Miranda*, the threshold determination of *Miranda*'s applicability would soon become indistinguishable from the exhaustive totality-of-the-circumstances test whose complexity was part of the impetus for establishing a bright-line rule. Even before its opinion in this case, the Ninth Circuit had already begun to head down that road. In *United States* v. *Beraun-Panez*, 812 F.2d 578, modified, 830 F.2d 127 (1987), the court adopted a "refined objective standard" (*id.* at 581) for *Miranda* custody determinations requiring courts to "focus on how a reasonable person *who was an alien* would perceive" circumstances surrounding questioning. *Ibid.* (emphasis added).

There is no justification for such a drastic departure from traditional *Miranda* custody analysis. The prospect that an unwarned statement will be inadmissible in the prosecution's case in chief provides police a significant incentive to give *Miranda* warnings whenever officers believe there is a rea-

[12] See *United States* v. *Salyers*, 160 F.3d 1152, 1159 (7th Cir. 1998) (rejecting claim that defendant's military experience, which "trained [him] to obey orders from those in authority," should be considered in determining whether he was in custody for *Miranda* purposes); *United States* v. *Macklin*, 900 F.2d at 950-951 (rejecting claim that mental retardation rendered defendant "in custody" when she was interviewed by police in front of her house); *United States* v. *Chalan*, 812 F.2d 1302, 1307 (10th Cir. 1987) (rejecting claim of Indian that he was "in custody" for *Miranda* purposes because, by tribal custom, he could not refuse the request of tribal governor to answer FBI agents' questions about a crime), cert. denied, 488 U.S. 983 (1988); *United States* v. *Welch*, No. CR-3-9-98, 1992 WL 1258524, at *4 (S.D. Ohio Mar. 19, 1992) (finding irrelevant defendant's contention that, as a military wife, she interpreted an Air Force investigator's request to attend an interview as an order; "[defendant's] attempt to transform the 'reasonable man' test into a 'reasonable military wife' test must be rejected").

sonable likelihood the suspect is "in custody." Cf. *Harris* v. *New York*, 401 U.S. 222, 225 (1971) ("sufficient deterrence flows when the evidence in question is made unavailable to the prosecution in its case in chief"). Police officers who engage in questioning before giving *Miranda* warnings also run the risk of a judicial finding that the statement was coerced. *Davis* v. *North Carolina*, 384 U.S. 737, 740-741 (1966). In that event, any statement would be unusable for any purpose, physical evidence derived from the statement might have to be suppressed, and before any subsequent statements were admissible, the court would have to carefully examine such factors as lapse of time and the presence or absence of intervening circumstances to decide whether the coercion "ha[d] carried over into the second confession." *Oregon* v. *Elstad*, 470 U.S. 298, 310 (1985). The incentive to give *Miranda* warnings is especially great when the officer is interviewing someone known to be a juvenile, because it is well established that age and experience with the justice system weigh heavily in voluntariness determinations. See generally *Gallegos*, 370 U.S. at 54.

In contrast, officers who give *Miranda* warnings and obtain explicit waivers before speaking with the accused are far more likely to persuade courts that all the statements they have obtained are voluntary. As this Court has explained, "[c]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare." *Dickerson*, 530 U.S. at 444 (quoting *Berkemer*, 468 U.S. at 433 n.20). Thus, rejection of the court of appeals' position will leave police with strong incentives to give *Miranda* warnings to minors before questioning them. In sum, the rule adopted by the court of appeals undermines *Miranda*'s "central virtue" (*Moran*, 475 U.S. at 426) of providing clear and work-

able guidelines to police and courts, without contributing significantly to the protection *Miranda* affords.

In addition to existing federal constitutional protections, both Congress and many state legislatures have enacted specific and detailed statutory protections for juveniles subject to official questioning. These statutes often provide graduated protections commensurate with the age of the child, and reflect the legislatures' considered judgment about the appropriate degree of protection required for children of various ages. Some state statutes furnish protections to juveniles who are questioned by police (such as requiring advice of rights, or that a parent or counsel be present), regardless of whether they are in custody at the time.[13] Some state statutes provide for the exclusion of any statement made during custodial questioning unless a parent or "interested adult" is present.[14] Others hold that a minor may

---

[13] See, *e.g.*, N.M. Stat. Ann. § 32A-2-14(C) (Michie 1999) (juvenile must be advised of rights and waiver obtained before questioning); W. Va. Code § 49-5-2-(*l*) (2001) (extrajudicial statements made by child under age 14 "to law-enforcement officials" inadmissible unless made "in the presence of the juvenile's counsel"; statements made by child between 14 and 16 inadmissible unless made in the presence of counsel or made in the presence of, and with the consent of, parent or custodian who has been informed of child's rights).

[14] See Colo. Rev. Stat. § 19-2-511(1) (2001) (with limited exceptions, statement made by juvenile as a result of custodial interrogation inadmissible unless parent, guardian, or counsel was present and was advised of juvenile's rights); Conn. Gen. Stat. Ann. § 46b-137(a) (West 1995 & Supp. 2003) (statements inadmissible "unless made by such child in the presence of his parent," after both were advised of their rights); see also *State* v. *Ledbetter*, 818 A.2d 1 (Conn. 2003) (statute inapplicable when child prosecuted as adult); N.C. Gen. Stat. § 7B-2101(b) (2001) (statement by child under age 14 inadmissible unless made in the presence of attorney or parent or guardian who has been advised of minor's rights); Okla. Stat. Ann. tit. 10, § 7303-3.1(A) (West 1998) (statement of child under age 16 taken while in custody inadmissible unless made in presence of parent, guardian, adult relative, or attorney, after being informed of child's rights).

not validly waive the right to remain silent or to counsel unless the minor has the assistance of counsel or has consulted with a parent or guardian.[15] Other statutes provide that statements made by children below certain ages are per se inadmissible (or presumptively inadmissible).[16] Similarly, the Federal Juvenile Delinquency Act, 18 U.S.C. 5033, provides (among other protections) that an arresting officer must notify a juvenile's parents that their child is in custody, and inform both the parents and the child of the child's rights. These statutory schemes provide minors with far more carefully calibrated protection than that afforded by the court of appeals' rule.

C. Respondent Was Not In Custody At The Time Of His Interview

An analysis of the objective conditions surrounding respondent's interview demonstrates that respondent's freedom was not curtailed to a degree associated with formal arrest. Although respondent came to the Sheriff's office at Deputy Comstock's request, there is no indication that his presence there was involuntary. Cf. *Mathiason*, 429 U.S. at 495 (noting that suspect's "came voluntarily to the police station" though he went there in response to officer's request to talk). There is likewise no indication that Comstock said anything to respondent's mother to indicate that she or

---

[15] See Mont. Code Ann. § 41-5-331 (2001) (when child taken into custody, must be advised of rights and parents informed; child under 16 may waive right to silence or to counsel only with agreement of parent, guardian, or counsel); Ind. Code Ann. § 31-32-5-1 (Michie 1997) (waiver only by counsel or by parent or guardian with child after "meaningful consultation"); Iowa Code § 232.11(2) (West 2000) (with certain exceptions, child under 16 may waive right to counsel only with written consent of parent or guardian; child 16 or older may waive only after good-faith effort to notify parent or guardian that the child is in custody).

[16] N.M. Stat. Ann. § 32A-2-14(F) (Michie 1999) (confessions by child under age 13 are inadmissible; rebuttable presumption that confession of child aged 13 or 14 is inadmissible).

her son was legally required to attend. Any ambiguity was dispelled upon the arrival of respondent and his parents at the station, when Comstock explicitly sought and received the parents' "permission for [her] to interview their son." J.A. 73. Although Comstock apparently did not explicitly seek respondent's permission to be interviewed, there is no indication that respondent did not wish to be interviewed.[17] Cf. J.A. 439 (respondent agreed at trial that the interview "was all voluntary on [his] part").

The court of appeals suggested (Pet. App. A16) that by calling respondent's parents, Comstock "enlisted the[ir] parental control" over respondent and thereby restricted his freedom of movement. In the absence of some evidence that Comstock indicated that respondent and his parents were legally required to come to the station and remain there, any such restriction would stem from respondent's presumed desire to obey his parents' wishes. But practical restrictions of that sort do not constitute a "'restraint on freedom of movement' of the degree associated with a formal arrest." *Minnesota* v. *Murphy*, 465 U.S. 420, 430 (1984) (quoting *Beheler*, 463 U.S. at 1125); *id.* at 433 (holding that "any compulsion [a probationer] might have felt" because of possibility his probation officer would revoke his probation if he left

[17] Although the court of appeals emphasized that there was no "manifestation of assent by [respondent]" (Pet. App. A16) to going to the station, that reflects an incorrect understanding of the respective burdens of the parties. Respondent bore the burden of proving circumstances tantamount to formal arrest. See, *e.g.*, *United States* v. *Madoch*, 149 F.3d 596, 601 (7th Cir. 1998) (the defendant "ha[s] the burden of making a *prima facie* showing of illegality" to support claim he was "in custody" when statement was given); *United States* v. *Webb*, 755 F.2d 382, 390 (5th Cir. 1985) ("the defendant bears the burden of demonstrating that statements which the defendant seeks to suppress were made while the defendant was under custodial interrogation"); cf. *Rakas* v. *Illinois*, 439 U.S. 128, 131 n.1 (1978) ("The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.").

the interview was insufficient to render him "in custody"). For similar reasons, to the extent the court of appeals' conclusion was based on a belief that a "reasonable 17-year-old" (Pet. App. A26) would have felt constrained to remain at the station out of respect for an authority figure, that too would be insufficient. *People* v. *P.*, 233 N.E.2d at 261 (subjective inhibition against leaving "out of respect for an officer of the law" is insufficient to render person "in custody").

Nor was the atmosphere of the interview "police dominated." *Berkemer*, 468 U.S. at 439. Respondent was not handcuffed, arrested, told that he was not free to leave, or subject to intimidation. He was interviewed by a single officer, and respondent agreed at trial that the episode "was basically a low-key" and "friendly conversation." J.A. 437-439. Although the court of appeals emphasized its understanding that respondent's parents "were refused permission to be present during the interview" (Pet. App. A8; accord *id.* at A12, A14, A16, A18, A20, A25), nothing in the record indicates why respondent's parents were not present in the interview room. (Respondent's attorney asserted during the suppression hearing that the parents were refused permission to be present, but there are no state-court findings on the subject. See J.A. 186, 190.) In any event, because police routinely interview witnesses alone so that their testimony is not affected by the presence of others, exclusion of the parents from the interview room is not an indication that respondent was in custody.

Although Comstock expressed disbelief when respondent said he was not present at the time of the shooting (J.A. 101), her initial questioning was consistent with the idea that respondent was merely a witness to events. Tellingly, when Comstock asked respondent, halfway through the interview, where he would be going "[w]hen we're done here today" (J.A. 122), respondent expressed no surprise that he was not in custody and simply replied that he would "be going[] back

home." *Ibid.* It was not until after respondent indicated his awareness that he was free to leave after the interview that he admitted knowing before the shooting that Soto had a gun. J.A. 123. Later in the interview, Comstock confirmed that respondent was free to use the telephone, get a drink, or use the restroom, and explicitly indicated that respondent would be free to leave after the interview, which he did. J.A. 149-151; see generally *Mathiason*, 429 U.S. at 495. Thus, taken as a whole, the objective circumstances of the interview clearly indicate that respondent was not subject to the "the functional equivalent of formal arrest." *Berkemer*, 468 U.S. at 442.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General
CHRISTOPHER A. WRAY
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JOHN P. ELWOOD
Assistant to the Solicitor General
DEBORAH WATSON
Attorney

NOVEMBER 2003